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November 18, 1997

**MEMORANDUM**

**PERSONNEL MEMO 97-13**

**TO:** Cabinet Secretaries  
Agency Heads  
Personnel Executives

**FROM:** Robert S. Peters  
Secretary

**SUBJECT: Reemployment Rights**

The purpose of this memorandum is to provide guidance to the agencies concerning the use of registers when the register contains the name or names of individuals with reemployment rights. The Franklin Circuit Court recently decided that an individual listed on the internal mobility section of a register was promoted while the same register contained the name of an individual with reemployment rights. At the trial of the case, the agency representative stated that the agency had not "considered" the individual with reemployment rights. The Court ultimately ruled that under the unique facts of this case, the appellant's reemployment rights were not given full effect. After a review of the Personnel Board's and Circuit Court's decisions in this case and the applicable laws and regulations, the procedures which should be followed by the agencies when the register contains the names of individuals with reemployment rights are:

1. If a register contains the name or names of individuals with reemployment rights and the agency conducts interviews of eligible applicants, reemployments should be interviewed in the order in which they appear on the register. The register should be marked as indicated in our Memorandum of February 26, 1996, attached.

**Personnel Memo 97-13**

**Page Two**

2. If the agency, after interviewing reemployments determines that the programmatic needs of the position to be filled favor an internal mobility applicant or reinstatement, we strongly recommend that the agency document the rationale for its decision and maintain such documentation in its files.
3. The procedures for considering "reinstatement", "outplacement" and "subject to layoff" candidates remain unchanged.

We do not interpret the personnel laws and administrative regulations to provide an absolute prohibition against the transfer, promotion or demotion of current state employees if an individual with reemployment rights appears on the register for the position. However, we believe that persons with reemployment rights are entitled to full consideration. Unless an agency can demonstrate that the internal mobility or reinstatement candidate was clearly better qualified for the position than the reemployment, we believe that the Personnel Board or the court will reverse the agency's decision. The fact that the Personnel Cabinet will process a P-1 promoting an internal mobility candidate over a person with reemployment rights will not constitute a defense for the agency's action. Agencies are warned against making commitments to internal mobility candidates prior to giving full consideration to individuals with reemployment rights.

RSP/DFE:cw

attachment